

RESPONSE TO THE DRAFT REPORT

U.S. Department of Labor

Assistant Secretary for
Employment and Training
Washington, D.C. 20210



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MEMORANDUM FOR: ELLIOT P. LEWIS
Assistant Inspector General
for Audit

FROM: EMILY STOVER DeROCCO 

SUBJECT: Audit of State Workforce Agencies'
Use of IRS Form 1099-MISC Data to
Identify Misclassified Workers -
Draft Report No. 03-05-005-03-315

Thank you for the opportunity to review and comment on the draft report, "Use of Internal Revenue Service (IRS) Form 1099-MISC Data to Identify Misclassified Workers."

We agree with the overarching audit findings that communicating with the IRS and use of the IRS 1099-MISC Extract Tape are effective tools for identifying employers that misclassify workers as independent contractors. Through misclassification of workers, employers may avoid paying employment taxes and exclude workers from benefits such as unemployment insurance (UI), workers compensation, health insurance, and retirement. The Employment and Training Administration (ETA) takes this issue very seriously and offers the following comments on the audit recommendations:

- 1. Provide assistance and guidance to the 16 new State Workforce Agencies (SWAs) that applied for the 1099 data during the 2004 IRS application period to increase the possibility that they are successful in obtaining and using the data.**

Agency Response: ETA has taken action to comply with this recommendation. Beginning with conference calls in August of 2004, personnel from the Office of Workforce Security (OWS) worked very closely with the IRS, OIG and SWAs to help insure successful use of these data. OWS coordinated a follow-up conference call on March 23, 2005, specifically for the benefit of the new states requesting the data from IRS. The goal of this call was to provide guidance to state information technology staff responsible for receiving, sorting, and manipulating the 1099-MISC data. In advance of the call, each participating state was given a sample data record in ASC11 format, and a COBOL picture of the data. An IRS programmer participated and explained each of these information items and answered technical questions. In addition, tax and technical staff from states that had been successful in obtaining and using the data participated in the call to share their knowledge and experience with it.

2. **Communicate to the SWAs interested in applying for and using the 1099-MISC data how to overcome: the complexity of the IRS application process; the difficulty in meeting the IRS safeguard requirements; obtaining the IT resources needed to make the 1099 data useful; and the perception that the age of the 1099 data is an obstacle to using it.**

Agency Response: ETA has been proactive in complying with this recommendation. On June 21, 2005, OWS coordinated a conference call with 18 states, the IRS, OIG and OWS. This call concentrated on explaining IRS safeguard requirements that states must comply with in order to receive the 1099-MISC data, the IT equipment needed, and a discussion of perceived problems in obtaining and using the data. Officials from New York and Idaho discussed their experience in complying with these requirements and the benefit of using the data to uncover misclassified workers.

Finally, this matter was given a high priority at the National UI Tax Conference held in Boise, Idaho, during the week of August 2-5, 2005. An employee from the IRS made a plenary session presentation on the “New Beginning” of cooperation between the IRS and SWAs. In addition, two workshops were conducted on obtaining and using the 1099-MISC Extract Tape. The OWS, IRS, and the New Jersey Department of Labor participated in these workshops and explained the enrollment process, safeguard requirements, and state benefits derived from using the data.

3. **Send a notification, along with a copy of this report, to SWAs before the start of the 2006 IRS enrollment period, encouraging them to apply for and use the 1099 data in their UI field tax audit program.**

Agency Response: ETA will comply with this recommendation by sending a notification and copy of this audit report to all SWAs six months before the August 2006 enrollment period begins. This should allow ample time for the SWAs to contact their IRS Governmental Liaison to discuss the necessary procedures, agreements and requirements involved in obtaining and using the 1099-MISC data.